

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petitions for the
Detachment of Certain Lands from
the City of Breezy Point pursuant to
Minnesota Statutes Chapter 414

FIRST PREHEARING ORDER

This matter came on for a telephone prehearing conference before Administrative Law Judge Barbara L. Neilson at 10:30 a.m. on June 3, 2009. The following individuals participated in the conference call:

Mary Ebnet and Patrick Ebnet participated on behalf of the Ebnet Petitioners¹;

Douglas Rach, Billie Jo Rach, Lou Ann Owens and Gerald Zwack (brother of Joseph Zwack) participated on behalf of the Rach Petitioners²;

Andrew MacArthur, City Attorney; Kathy Millard, City Clerk; JoAnn Weaver, Mayor; and Jim Perry, Planner, participated on behalf of the City of Breezy Point;

Jim Brandt, Supervisor, participated on behalf of Ideal Township; and

Bruce Galles, Board Chair and Supervisor, participated on behalf of Pelican Township.

The record opened in the above-referenced matters on January 20, 2009, upon the filing of two separate Petitions for Detachment with the Municipal Boundary Adjustment Unit. The Ebnet Petitioners requested the detachment of approximately 248 acres from the City of Breezy Point to Ideal Township; the Rach Petitioners requested the detachment of approximately 312 acres from the City of Breezy Point to Pelican Township. The parties were directed into local discussions pursuant to Minn. Stat. § 414.01, subd. 16. The first hearing was held on March 6, 2009, and was continued indefinitely to allow for local discussions.

¹ The Ebnet Petition was filed by Mary Ebnet, Theodore Ebnet, Kimberly Ebnet, Kelli Ebnet, and Patrick Ebnet. Mary Ebnet and Patrick Ebnet are spokespersons for the group.

² The Rach Petition was filed by Douglas Rach, Billie Job Rach, LouAnn Owens, Joseph Zwack, Thomas Thompson, Mavis Thompson, Jodell Rau, John Berry, Larry Rasmussen, and Diane Cleveland Airhart. Douglas Rach is the spokesperson for the group.

During April, 2009, the Municipal Boundary Adjustment Unit received written notification from the City of Breezy Point and the property owner petitioners in both dockets advising that they had failed to resolve contested issues through discussions and declaring their willingness to proceed with a hearing. On April 27, 2009, the Chief Administrative Law Judge issued an Order consolidating the two detachment petitions for hearing. On April 28, 2009, the Director of the Municipal Boundary Adjustment Unit transmitted notification that hearings were requested. The undersigned Administrative Law Judge was thereafter assigned to hear these matters.

Based upon the discussions during the prehearing conference and all of the files in these matters, the Administrative Law Judge makes the following:

ORDER

1. The Administrative Procedures Act³ and the Office of Administrative Hearings' contested case rules⁴ shall govern the conduct of these matters to the extent that they do not conflict with the specific provisions of Chapters 412 and 414 of the Minnesota Statutes.

2. The parties to this proceeding consist of the Ebnet Petitioners, the Rach Petitioners, the City of Breezy Point, Ideal Township, and Pelican Township. Because the Townships are parties, they are not required to file formal motions to intervene in these matters. A service list to be used for purposes of these cases is attached. It is expected that the spokespersons for the Ebnet and Rach Petitioners will keep the other property owners informed throughout this hearing process.

3. The following schedule is adopted in both of these matters:

Description	Due Date
Parties' Positions regarding Allocation of Costs of Proceeding	June 18, 2009
Responses to June 18, 2009, Position Letters	June 25, 2009
Parties' Initial Identification of Expert Witnesses	July 15, 2009
Parties' Additional Identification of Expert Witnesses	July 29, 2009
Discovery Completed	August 3, 2009
Dispositive Motions Filed	August 10, 2009
Responses to Motions	10 working days after receipt of motion

³ Minn. Stat. §§ 14.57 – 14.62.

⁴ Minn. R. 1400.5100 – 1400.8400.

Witness Lists, Exhibit Lists, Expert Reports, and Exhibits Exchanged and Filed	August 17, 2009
Notification to ALJ of Request for Court Reporter	September 1, 2009
Telephone Conference Call regarding Status and to Set Time for Administrative Law Judge Tour of Subject Properties	September 2, 2009 at 10:30 a.m.
Evidentiary Hearing	September 9-10, 2009
Written Public Comments Submitted to ALJ	September 10, 2009
Parties' Post-Hearing Submissions	To be determined at hearing
ALJ Decision Due	March 6, 2010

4. Information must be post-marked, emailed, faxed, or delivered to the Administrative Law Judge and the other parties by the due date referenced in the above schedule.

5. Each party will be responsible for its own attorney's fees, expert fees, and trial preparation expenses. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs of the proceeding before the commencement of a hearing, the costs must be allocated on an equitable basis by the Chief Administrative Law Judge. If the parties to these matters have not been able to reach agreement on the allocation of costs of the proceeding by June 18, 2009, they will inform the Administrative Law Judge in writing of their positions on the allocation of costs at that time. Responses to these position letters shall be submitted by June 25, 2009. Copies of both submissions shall be sent to the other parties. After the evidentiary hearing is conducted, the Chief Administrative Law Judge will order a division of costs. Because the Chief Administrative Law Judge's determination will not be made until the conclusion of the hearing, the parties are encouraged to continue to make efforts to reach agreement on the cost allocation up until the commencement of the hearing.

6. The expert witness disclosures to be made by July 15 and 29, 2009, must identify persons expected to be called as expert witnesses, describe the subject matter of each expert's expected testimony, state the substance of the facts and opinions to which the expert is expected to testify, and provide a summary of the grounds for each opinion.

7. The witness lists provided by each party must include a brief description of the testimony expected to be offered by each witness.

8. All exhibits to be offered by the parties at the hearing will be premarked with exhibit numbers. The Ebnet Petitioners' exhibits shall be premarked in the lower right-hand corner with numbers 1 through 99. The Rach Petitioners' exhibits shall be premarked with numbers 100-199. The City's exhibits shall be premarked with numbers

200-299. Ideal Township's exhibits shall be premarked with numbers 300-399. Pelican Township's exhibits shall be premarked with numbers 400-499.

9. The hearing in this matter shall be held on September 9 – 10, 2009, beginning at 9:00 a.m. each day, in the City Council Chambers, Breezy Point City Hall, 8319 County Road 11, Breezy Point, MN 56472.

10. The Director of the Municipal Boundary Adjustment Unit shall arrange for the publication of the Notice of Reconvened Hearing in the appropriate newspaper of general circulation as the parties may advise.

11. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. Rules part 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us.

12. At this time, it is anticipated that the Ebnet Petitioners will present their evidence and witnesses first at the hearing, followed by the Rach Petitioners. The City will thereafter present its evidence and witnesses in response to both Petitions. Ideal Township will be permitted to present evidence and witnesses it wishes relating to the Ebnet Petition, and Pelican Township will be permitted to present evidence and witnesses it wishes relating to the Ebnet Petition. Finally, the parties shall have the opportunity to offer rebuttal. Of course, the parties may agree or request permission of the Administrative Law Judge to take a witness out of order or to complete the testimony of a witness the first time he or she is called by any party. The manner in which the hearing will proceed may be discussed further and modified during the conference call to be held on September 2, 2009.

13. The hearing will be recorded by digital recording device unless one or more parties agree to absorb the cost of a court reporter.

14. No public comment hearing has been requested.

15. Written comments may be submitted by the public to the Administrative Law Judge at any time through September 10, 2009. They must be post-marked, faxed, emailed, or delivered by that date to:

Barbara L. Neilson
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620
Fax No.: 651-361-7936
barbara.neilson@state.mn.us

16. The parties have not requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Dated: June 5, 2009

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

cc: Christine Scotillo
Docket Coordinator